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SIPDIS

DEPARTMENT FOR WHA/CAR (BENT), EB/ESC/IEC (GALLOGLY),
EB/CBA (SMITH-NISSLEY)

E.O. 12958: N/A

TAGS: [ECON](#) [ENRG](#) [JM](#)

SUBJECT: IN FACT IT'S A GAS: OIL COMPANIES UNHAPPY WITH
PETROLEUM CODE OF CONDUCT

[1](#)1. (U) This is an action request; please see paragraph 20.

SUMMARY

[1](#)2. (U) The petroleum industry has been a source of problems for the GOJ since it was fully deregulated in 1993. There have been several price riots and threats of industrial action in the sector over the past decade. To settle the most recent crisis, in December 2003, the GOJ promised the retailers' association that a new code of conduct would be put in place to create more favorable conditions when dealing with the international petroleum companies that control 65 percent of the market. Despite concerns raised by Exxon, Shell and Texaco, the Free Trade Commission implemented the code in December 2004. At that time, Embassy Kingston sent a letter of concern to the Ministry of Commerce, Science, Technology and Energy (MCSTE), expressing USG support for the free market and private enterprise. Following a breakdown in negotiations with the GOJ, representatives from the petroleum marketing corporations have approached Embassy Kingston and requested further assistance in dealing with the GOJ to get their concerns addressed. End Summary.

BACKGROUND

[1](#)3. (U) The Jamaican gasoline industry was partially deregulated in 1991, and then fully deregulated in 1993. Since 1991, major international marketing companies have increased their market share from seven percent to 65 percent. Roughly one-third of the internationally branded stations are dealer owned, with the rest being directly controlled by the marketing companies (American firms Esso and Texaco, and Dutch Shell). Directly hired retail outlet managers receive a corporate operations manual from the marketing companies, but have no additional training. Profit margins across the industry have fallen from 12-15 percent in 1991 to 5-8 percent in 2004 due to increased competition and higher oil prices worldwide.

[1](#)4. (U) Though prices for unleaded and diesel gasoline on the island are still lower than the world average, the people of Jamaica are very sensitive to price shocks. Since deregulation, there have been three significant fuel tax increases (1994, 1999, 2001) in the market, resulting in sharp price hikes that touched off widespread protests and rioting, a lesson that was not lost on the ruling Peoples National Party (PNP). Shortages were also threatened in December 2003 when the National Workers Union (NWU), which represents the pump attendants, threatened to organize a labor strike unless the attendants received a pay increase from the retailers, represented by the Jamaica Gasoline Retailers Association (JGRA). A GOJ mediator was able to avert the strike by getting the JGRA to agree to raise wages to the attendants in return for a GOJ promise to enact a new code of conduct that would help retailers in their dealings with the international marketing companies.

[1](#)5. (U) In 2004, the Jamaican Fair Trade Commission (FTC), a GOJ institution with a mandate to regulate trade and pricing issues, began drafting the JGRA's requested code of conduct. While Minister of Commerce, Science and Technology with Energy (MCSTE) Philip Paulwell and FTC chairwoman Barbara Lee initially assured the marketing companies that the code of conduct would be a non-legislative, voluntary form of self-regulation to prevent unfair pricing and trading policies, the marketing companies were later informed that the provisions of the code were mandatory, and that violations would carry fines ranging from US\$10,000 to US\$200,000.

[1](#)6. (U) The code of conduct went into effect on December 30th, [1](#)2004. The marketing companies are presently refusing to comply with the provisions of the code of conduct as written, since they maintain that it fails to address their concerns and runs contrary to existing Jamaican law.

MARKETING COMPANY CONCERNS

17. (U) Standardization, safety, and environmental concerns were raised by the marketing companies when the code of conduct was being drafted, but, they complain, none of their proposals appeared in the document as enacted. Of primary concern to the marketing companies is the concept of lingering liabilities - provisions in Jamaican law that make the original owner of a property used as a petroleum retail outlet responsible for any contamination of the environment that can be traced to that outlet, even decades later. The marketing companies make large capital investments in modern storage tanks, safety systems, and environmental protection procedures to safeguard themselves from future litigation. However, their independent competitors differentiate themselves primarily on the basis of price and, according to the marketing company representatives, often cut corners on safety equipment and environmental protections in order to stay competitive. The JGRA opposed inclusion of environmental and safety standards in the code, arguing that the independent retailers can't afford to put in the kind of technology that the marketing companies use, and would view such standards as an unmanageable financial burden for the "Mom and Pop" retailers.

18. (U) The marketing companies also object to stipulations in the code of conduct that place a five-year limit on supplier contracts signed between the marketing companies and independent retailers. When a marketing company affiliates itself with a retail outlet, it is a capital intensive process that entails replacing the signage and replacing the existing fuel storage equipment with one that meets the marketing company's standards. The time period required to generate a return on these USD 1 - 2 million investments is generally longer than five years, which is why the marketing companies prefer to negotiate contracts for 15 to 20 years in duration. The provision was included in the code at the behest of the JGRA in order to give retailers more flexibility by allowing them to change suppliers more frequently and get better deals out of the "big three" by shopping around during contract renewal negotiations.

19. (U) The right of first refusal is one of the key sticking points. This provision of the code restricts the ability of the marketing companies to sell properties that are wholly owned by the corporation. It gives the local retail manager the right of first refusal in the event that the marketing company chooses to sell the property. This provision was designed to protect the retail outlet managers who, despite being contracted employees of the marketing company, view their jobs as a family business. This adds an extra step in the selling process, and prevents property owners from engaging in property swaps with other marketing companies. It also potentially forces the corporations to sell their properties to individuals who may not be able or willing to maintain the safety and environmental protection procedures, placing the marketing companies at the risk of long-term "lingering liability" litigation.

THE GOJ PERSPECTIVE

10. (U) On December 28, 2004, at the request of the marketing companies, Embassy Kingston sent a letter to the MCSTE, expressing concern that the code would create inefficiencies in the market by artificially constraining free enterprise in the petroleum sector. In a follow-up call on 18-Jan-2005, Econoff spoke to Conroy Watson, Energy Division Senior Director at the MCSTE, and asked him for an explanation of the MCSTE's rationale for the code of conduct, a description of their benchmarks for success, and the nature of the system in place for improving the code through feedback from the parties involved.

11. (U) Watson replied that the MCSTE's goal is to create a more harmonious relationship between the marketing companies and the retailers, as measured by a drop in the number of complaints registered with the FTC and the MCSTE. He stated that the two sides are currently at loggerheads, a situation that is not in the best interests of the industry or the country. The code will allow the MCSTE to intervene as a regulatory body, helping the retailers and marketers talk to each other and identify principles and guidelines for continuing a cordial business relationship. Enforcement will be handled entirely by the FTC, as the MCSTE has neither the personnel nor the funding to create or maintain an inspection and enforcement regime. Watson suggested that if the USG was interested in improving that aspect, they might provide the necessary funds.

12. (U) The MCSTE does not find it unreasonable that the marketing companies would want to make their money back after investing one or two million dollars in a retail outlet.

However, in many cases the outlet managers have been in place for 10 to 15 years and consider it to be their family business. They have complained to the MCSTE that the marketing companies are using "draconian methods" to end the relationship if they don't measure up to the corporate standards. Watson used the analogy of Wal-Mart entering a small town and driving the Mom and Pop stores out of business. (Note: This is a false analogy, as the local "Mom & Pop" station managers being forced out are contract employees working at stations wholly owned by the marketing companies.)

13. (U) Asked why the MCSTE and FTC had opted for a code of conduct, rather than pushing forward legislation, Watson responded that the Ministry of Energy had been working on a legislative solution before the GOJ reorganized the ministries and transferred the energy portfolio to the MCSTE, but that the new ministry decided that a code of conduct would be a "milder approach" to resolving the situation.

14. (U) Asked about the nature of the performance review process and the method for altering the code based on evaluations of its effectiveness, Watson stated that this would be handled through bi-monthly meetings of the MCSTE's advisory committee, to which representatives of the private sector are invited. Complaints and problems raised during the meetings go directly to Minister Paulwell, and serious concerns about specific provisions of the code will be addressed on a case-by-case basis.

15. (U) Asked why the code doesn't address the marketing companies' environmental concerns, Watson responded that the guidelines set down by the National Environmental Protection Agency (NEPA) serve to regulate all businesses on the island, including petroleum retail outlets. He added the caveat that the regulations are fairly broad, and that specific issues pertaining to the petroleum industry were not spelled out in black and white.

BREAKDOWN IN TALKS

16. (SBU) On 18-Jan, Econoff contacted Brian McFarlane, Country Manager for Esso and related the MCSTE's position statement. McFarlane related the results of a closed-door meeting between Minister Paulwell, the JGRA and the marketing company representatives on January 13th, stating that the meeting initially looked very promising. Paulwell proposed moving the debate over the code out of the media by holding future bilateral and tripartite meetings behind closed doors and refraining from making statements to the press - a stipulation to which all parties agreed.

17. (SBU) Paulwell asked the JGRA and the marketing companies if they would be willing to abandon the code of conduct and continue doing business under existing Jamaican law, then asked if the JGRA would be willing to abandon the code of conduct and go about their business on the basis of existing legislation. The JGRA rejected that suggestion and insisted on marketing company compliance with the code. The meeting then broke up with no agreement other than to refrain from speaking to the press.

18. (SBU) On January 14th, a statement by Minister Paulwell about the code appeared in the Jamaica Gleaner, the island's leading newspaper. McFarlane complained to Econoff that the dispute is being tried in the press, leaving consumers with a negative view of the petroleum industry. As a result, said McFarlane, the marketing companies have lost their trust in the MCSTE. He further stated that the marketing companies do not believe that further discussions with the Ministry and the FTC will bear fruit, and requested a USG intervention on the marketers' behalf, with an eye towards getting their concerns addressed in the code.

COMMENT

19. (SBU) It appears that the MCSTE is attempting to use the code of conduct as a mechanism to buy off the JGRA and prevent the kind of industrial action that rocked the island in '94, '99 and '01. It is clear that the threatened strike in 2003 was averted only when the GOJ promised the JGRA a deal that would give its members an advantage in dealing with the marketing companies. The MCSTE, as shown by Watson's inaccurate Wal-Mart analogy, claims that it is protecting the "little guy" from the big corporations, and has paid little attention to the long-term consequences and concerns raised by the marketing companies. Indeed, the fact that the MCSTE's measure of success is a "reduction in the number of complaints" indicates that the primary rationale behind the code was to prevent industrial action between the NWU and JGRA by promising both sides a financial windfall at the expense of the marketing companies, and that they would now

just like both the JGRA and the marketing companies to go away and stop bothering the Ministry. End Comment.

ACTION REQUEST

120. (SBU) Action Request: Post has sent a letter of concern to the Minister Paulwell and followed up with a call to Senior Director Watson at the MCSTE, but the American marketing companies have requested stronger USG intervention. Post is not satisfied that the petroleum marketing companies have exhausted all the legal means at their disposal, and requests department guidance for further action.
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